

RETAIL TRADING ACT 2008 DECISION**REASON FOR DECISION**

1. I, Janet Bailey, am an officer holding a delegation from the Secretary under the *Retail Trading Act 2008 (Act)* to exercise the functions prescribed in that Act.
2. On 4 March 2025, Mehtab Enterprises Pty Ltd trading as IGA Karuah (**Applicant**) made an application under section 10 of the Act as occupier of a shop at 425 Tarean Road, Karuah, NSW 2324 (**Shop**), for the Shop to be exempt from the requirement to be kept closed on Anzac Day 2025. (**Application**).
3. I have considered the Application and public comments which were received.
4. On this day I have decided to refuse the Application as I am not satisfied that, as required by section 10(2) of the Act, it is in the exceptional circumstances of the case in the public interest to do so, having regard to the following matters:
 - (a) the nature of the Shop and the kinds of goods sold by the Shop.
 - (b) the need for the Shop to be kept open on the days concerned.
 - (c) the likely effect of the proposed exemption on the local economy, tourism and small businesses and other businesses in the area.
 - (d) the likely effect of the proposed exemption on employees of, or persons working in, the Shop.
5. In making this decision I have taken into account the principles enunciated in a decision of the Administrative Decisions Tribunal (**Shop Distributive and Allied Employees Association v Director General of Services Technology and Administration and K-Mart Australia Limited [2010] NSW ADT 312**) that the test under section 10 is a two-step process, there being a need for both exceptional circumstances and for the granting of the exemption to be in the public interest.
6. The Application was placed on public exhibition for a period of no less than 14 days from 12 March 2025 and public comment was sought. Two public submissions were received; from the Shop, Distributive & Allied Employees' Association, New South Wales (SDA NSW) and from the NSW Branch of the Shop, Distributive & Allied Employees' Association (SDA).
7. I have now considered the circumstances raised by the Shop, as well as the submissions from SDA and SDA NSW.

8. The Applicant submitted the following as a claim for exceptional circumstances:
- (a) The Shop is the only supermarket providing essential grocery items to the people in the town of Karuah and many surrounding towns and localities.
 - (b) The nearest supermarket is 30 km away in Raymond Terrace.
 - (c) The local community rely on the Shop for their daily food and other essential items.
 - (d) There is a lack of public transport in the area making it impossible for people to travel to other towns for grocery shopping.
 - (e) Karuah is a tourist town that receives many tourists in Public Holidays and other Holidays.
 - (f) Its location on the Pacific Motorway about 2 hours drive from Sydney makes Karuah an ideal stopover for a break for tourists.
9. Whilst I acknowledge the circumstances raised by the Shop, I do not consider these qualify as exceptional circumstances in accordance with section 10(2) of the Act for the following reasons:
- (a) No evidence was provided by the Applicant in support of the claim that customers are dependent on the Shop for their daily grocery needs, or that there is limited access to other retail options. There were also no public submissions supporting this claim, despite the notice being published both on the Fair Trading website and instore to raise awareness with customers.
 - (b) The requirement for customers to travel to more distant locations to avoid restricted trading will also be lessened by the statewide application of the Act.
 - (c) A single day shop closure may be considered a regular, routine or normally encountered circumstance in many areas across NSW.
 - (d) A Shop located in a tourist town would not be considered out of the ordinary course, or unusual, or special, or uncommon in many areas across NSW.
 - (e) Having regard to the rationale of the Act, there should be a general presumption against trading on restricted trading days and there appears to be no exceptional circumstance to warrant the granting of an exemption.
10. The Applicant submitted the following reasons as to why they believed granting an exemption would be in the public interest:
- (a) The Shop is a supermarket/grocery store selling grocery items, fresh fruit and vegetables, bakery items, fresh meat, deli items, frozen foods, chilled foods and newspapers.
 - (b) The local and surrounding communities rely on the Shop for their daily grocery needs.
 - (c) The nearest supermarket is 30 km away. The majority of the population in the local community are elderly people who cannot travel this distance for their daily supplies.
 - (d) In the cost of living crisis, it is not affordable to travel an extra distance and spend extra on fuel. Hence people shop local at the Shop for their essential items.
 - (e) If the Shop were not exempt, the local population would be without food supply and essential items such as baby formula, baby needs and personal care items for 24 hours.
 - (f) Small businesses in the town such as cafes and restaurants also buy their supplies from the Shop. It will help them in their trading if the Shop is kept open.
 - (g) Karuah attracts many tourists with facilities in town like Big 4 Karuah Jetty holiday park, caravan parks, three motels providing accommodation services. If the Shop were not exempt, it will tarnish the reputation of Karuah as a tourist friendly town and will affect the tourism in future. Karuah is also still recovering freeway bypass loss.
 - (h) If a town became known for being open and welcoming on restricted days, it can boost its reputation as tourism friendly destination.

- (i) The exemption can stimulate the local economy, support small business survival and enhance the tourism sector making the area more vibrant and attractive.
- (j) The exemption would increase revenue for small businesses, especially in hospitality and retail, who can capitalise on additional trading opportunities boosting sales.
- (k) The exemption would have supply chain benefits. More activity in local businesses also supports suppliers, delivery services and other dependent business.
- (l) More trading hours may lead to increased employment particularly for casual workers.
- (m) It will help those staff who elect to work to earn some extra money in the form of public holiday loading.
- (n) If the exemption is granted the Shop will roster six employees on that day.

11. I do not consider the reasons provided by the Applicant sufficiently demonstrate that granting the Shop an exemption is in the public interest in accordance with section 10(2) of the Act for the following reasons:

- (a) The Application relates to one single day, with unrestricted trading available under the Act on the days immediately before and after Anzac Day. This does not indicate a significant restriction of access to daily grocery needs for the community in Karuah and surrounding areas, even having regard to the large elderly population or to local businesses, cafes and restaurants who buy their supplies from the Shop.
- (b) Additionally, the requirement for customers to travel to more distant locations to avoid restricted trading will also be lessened by the statewide application of the Act.
- (c) The claims made regarding the tarnishing of the reputation of Karuah as tourist friendly and affecting future tourism are not supported with evidence, nor were they supported by public submissions.
- (d) The claims made regarding increased attractiveness of the region for tourists and a boost in reputation based on the granting of an exemption and being known as open and welcoming on restricted days are not supported with evidence, nor were they supported by public submissions.
- (e) There is no evidence provided in the Application regarding benefits to the local economy or small businesses to support the argument that granting an exemption would be in the public interest, or that the impact on the local economy or small businesses in the area would be significant if an exemption were to be granted.
- (f) There were also no submissions received from the general public or local small businesses in the area supporting this application for exemption; that there would be a boost in sales from additional trading opportunities.
- (g) There is no evidence provided in the Application regarding benefits to the suppliers, delivery services or other dependent business in the supply chain to support the argument that granting an exemption would be in the public interest, or that the impact on suppliers, delivery services or other dependent business in the supply chain would be significant if an exemption were to be granted.
- (h) The Application notes granting an exemption would increase employment for casual workers and provide a financial incentive to employees who elect to work. However, there were no submissions from employees of the Shop supporting granting of an exemption, despite the notice being published both on the Fair Trading website and instore to raise awareness with staff.
- (i) By contrast, the SDA submission refers to the social welfare of employees, their families and society, and notes the granting of an exemption would be out of step with community expectation, put pressure on retail employees and their families and impact the ability of many employees to commemorate Anzac Day with their community.

- (j) Notwithstanding the absence of submissions from direct employees of the Shop, 'public interest' refers to the interest of the general public, not that of individuals, employees, or employers.
- (k) The notion of 'public interest' refers to matters that might affect the public as a whole, which does not appear to be the case in this instance

Janet Bailey
Director
NSW Fair Trading
9 April 2025